



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,340	03/01/2002	Xiangsheng Zheng	5656-28	5048

20792 7590 06/03/2005

MYERS BIGEL SIBLEY & SAJOVEC  
PO BOX 37428  
RALEIGH, NC 27627

EXAMINER
----------

JASTRZAB, JEFFREY R

ART UNIT	PAPER NUMBER
----------	--------------

3762

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/087,340	ZHENG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeffrey R. Jastrzab	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 39, 44-46 and 48-51 is/are pending in the application.
- 4a) Of the above claim(s)    is/are withdrawn from consideration.
- 5) ☒ Claim(s) 39, 45, 46 and 48-51 is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☒ Claim(s) 44 is/are objected to.
- 8) ☐ Claim(s)        are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on        is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- 1 ☐ Certified copies of the priority documents have been received.
- 2 ☐ Certified copies of the priority documents have been received in Application No.       .
- 3 ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>      </u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                     |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/22/02, 12/6/04</u> | 6) <input checked="" type="checkbox"/> Other: <u>IDS is approved.</u>                           |

**DETAILED ACTION*****Terminal Disclaimer***

The terminal disclaimer filed on 4/18/05 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent No. 6,662,045 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Claim Rejections - 35 USC § 102***

Claims 1, 2 and 6-9 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Thompson et al., US 5,800,465.

Applicant argues essentially that Thompson's electrode configurations don't teach or suggest the "configured for positioning at the atrial septum of the heart" limitation of Claim 1. As previously indicated, any lead could be considered as "configured" to be at or within a puncture in the septum. The electrode structure of Thompson et al. need only be inherently capable of performing the claimed functions to meet the inherency requirement. In this instance, since the leads of Thompson et al. are at least long enough to reach the atrial septum, they are therefore capable of stimulating the atrial septum. For example, as bipolar stimulation can be used in Thompson, the distal electrode, e.g. 33, on a lead would be considered the one capable of stimulating the septum, and a more proximal electrode, e.g. 32, would be the one "configured for insertion into the atrium without extending into the right ventricle. Furthermore, Applicant's disclosed electrodes are placed at the atrial septum in the

Art Unit: 3762

same way that Thompson is capable of, i.e. the "configured" language is merely relative to the method of implantation and not a structural lead difference.

As to Applicant's arguments regarding Claim 2 are noted, however, Thompson's device need only be capable of the claimed function, which, if the patient had an atrial septal puncture, the Thompson et al. lead is certainly capable of being positioned therein. Since there is no structure to differentiate the lead of Thompson et al. from the claimed, the rejection stands. As an aside, if Applicant wishes to pursue a method of positioning an electrode at a atrial septum or through a puncture therein, method claim structures are suggested. Accordingly, this rejection is hereby made FINAL.

### ***Claim Rejections - 35 USC § 103***

Claims 3-5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. in view of Bardy for the reasons set forth in the previous office action.

Applicant's remarks regarding the motivation to combine the Thompson et al. device with Bardy's device are noted, however, the fact remains the concept of lead anchoring is notorious in the art. Even without a specific teaching as the Bardy anchor screw, modification of a lead in general to provide anchoring for site specific stimulation is a fundamental and widely accepted concept in the art. The Thompson *method* may not provide for anchoring, but that structure in combination with the teachings at the time of the invention in the cardiac stimulation arts, e.g Bardy, render a modification of the Thompson et al. lead to include anchoring an obvious modification. This rejection is hereby made FINAL.

### ***Claim Objections***

Claim 44 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 44 currently depends upon canceled claim 43.

### ***Allowable Subject Matter***

Claims 39, 45, 46, 48-51 are allowed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

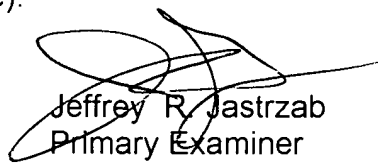
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3762

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (571) 272-4947. The examiner can normally be reached on Monday - Wednesday 5:30 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jeffrey R. Jastrzab  
Primary Examiner  
Art Unit 3762  
5/16/15